

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



June 14, 2005

Regulation Package #0803-18

CDSS MANUAL LETTER NO. CCL-05-07

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,
CHAPTER 9.5, FOSTER FAMILY HOMES

Regulation Package #0803-18**Effective 6/8/05****Sections 89244, 89245, 89370 and 89566**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/FosterFami_629.htm.

These regulations will give licensing staff the express authority to copy client or facility records, and to remove them if necessary for copying. The existing regulations do not consistently permit the copying of client or facility records, which has been a hindrance to the licensing program. For example, one licensee of a facility being investigated refused even to let licensing staff hand-copy portions of facility files because the regulations did not clearly state that licensing staff could copy those files.

These regulations will correct the situations described above. They delineate and amplify the licensing program's authority to inspect, audit, and copy client or facility records upon demand during normal business hours; and to remove them if necessary for copying. At the same time, the regulations contain safeguards that prohibit the removal of emergency or health-related information (unless other copies of those documents are available) and establish standards for the safe removal and timely return of records to facilities. They cut across facility categories and apply to all licensed adult and elderly community care facilities, children's residential community care facilities, and child day care facilities. These regulations will ensure that CDSS has reasonable access to information in order to be able to better evaluate facilities, investigate complaints, and protect the health and safety of clients in care.

These regulations were considered at the Department's public hearing held on June 16, 2004.

FILING INSTRUCTIONS

Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-05-06. The latest prior manual letter containing Foster Family Homes regulation changes was Manual Letter No. CCL-04-07.

Page(s)

1 and 2
59 through 64
76 and 77
101 and 102

Replace(s) Page(s)

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Attachments

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89244 INSPECTION AUTHORITY OF THE LICENSING AGENCY**89244**

- (a) The licensing agency shall have the inspection authority specified in Sections 1533, 1534, and 1538 of the Health and Safety Code.

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- (1) Health and Safety Code Section 1533 provides in part:

" . . . any duly authorized officer, employee, or agent of the State Department of Social Services may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.

"Foster family homes which are considered private residences for the purposes of Section 1530.5 shall not be subject to inspection by the department or its officers without advance notice, except in response to a complaint. The unannounced visits shall not constitute the annual evaluation visit required by Section 1534. Inspection visits to foster family homes shall be made during normal business hours, unless the serious nature of a complaint requires otherwise.

"'Normal business hours,' as used in this section, means from 8 a.m. to 5 p.m., inclusive, of each day from Monday to Friday, inclusive, other than state holidays."

- (2) Health and Safety Code Section 1534(a) provides in part:

"(a) (1) Every licensed community care facility shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

"(A) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

"(i) When a license is on probation.

"(ii) When the terms of agreement in a facility compliance plan require an annual evaluation.

"(iii) When an accusation against a licensee is pending.

"(iv) When a facility requires an annual visit as a condition of receiving federal financial participation.

"(v) In order to verify that a person who has been ordered out of a facility by the department is no longer at the facility.

HANDBOOK CONTINUES

**89244 INSPECTION AUTHORITY OF THE DEPARTMENT OR LICENSING
AGENCY (Continued)****89244**

HANDBOOK CONTINUES

- "(B) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subparagraph (A)...
- "(C) Under no circumstance shall the department visit a community care facility less often than once every five years.
- "(2) The department shall notify the community care facility in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.
- "(3) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located."
- (3) Health and Safety Code Section 1538 provides in part:
- "(a) Any person may request an inspection of any community care facility or certified family home in accordance with this chapter by transmitting to the state department notice of an alleged violation of applicable requirements prescribed by statutes or regulations of this state, including, but not limited to, a denial of access of any person authorized to enter the facility pursuant to Section 9701 of the Welfare and Institutions Code. A complaint may be made either orally or in writing.
- "(b) The substance of the complaint shall be provided to the licensee or certified family home and foster family agency no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee or certified family home and foster family agency nor any copy of the complaint or any record published, released, or otherwise made available to the licensee or certified family home and foster family agency shall disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the state department conducting the investigation or inspection pursuant to this chapter.

HANDBOOK CONTINUES

**89244 INSPECTION AUTHORITY OF THE DEPARTMENT OR LICENSING
AGENCY(Continued)****89244**

HANDBOOK CONTINUES

"(c) Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a community care facility or certified family home, the state department shall make a preliminary review and, unless the state department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection of the community care facility or certified family home within 10 days after receiving the complaint, except where a visit would adversely affect the licensing investigation or the investigation of other agencies. In either event, the complainant shall be promptly informed of the state department's proposed course of action. . .

"(d) Upon receipt of a complaint alleging denial of a statutory right of access to a community care facility or certified family home, the state department shall review the complaint. The complainant shall be notified promptly of the state department's proposed course of action."

HANDBOOK ENDS HERE

(b) The licensing agency shall have the authority to interview any foster child, in a foster family home, without prior consent.

(1) The caregiver shall make provisions for private interviews with any foster child.

(c) The licensing agency shall have the authority to inspect, audit, and copy the children's or the foster family home's records upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the requirements in Sections 89370(c) and 89566(d).

(1) The caregiver shall make provisions for the examination of all records relating to the operation of the foster family home.

(d) The licensing agency shall have the authority to observe the physical condition of the child, including conditions which could indicate abuse, neglect, or inappropriate placement, and to have a licensed medical professional physically examine the child.

NOTE: Authority cited: Section 1530, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1501.1, 1530.5, 1531, 1533, 1534 and 1538, Health and Safety Code.

89245 EVALUATION VISITS**89245**

- (a) Every home shall be evaluated as specified in Sections 1533 and 1534 of the Health and Safety Code.

HANDBOOK BEGINS HERE

- (1) Health and Safety Code Section 1533 provides in part:

" . . . any duly authorized officer, employee, or agent of the State Department of Social Services may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.

"Foster family homes which are considered private residences for the purpose of Section 1530.5 shall not be subject to inspection by the department or its officers without advance notice, except in response to a complaint. The unannounced visit shall not constitute the annual evaluation visit required by Section 1534. Inspection visits to foster family homes shall be made during normal business hours, unless the serious nature of a complaint requires otherwise.

"Normal business hours,' as used in this section, means from 8 a.m. to 5 p.m., inclusive, of each day from Monday to Friday, inclusive, other than state holidays."

- (2) Health and Safety Code Section 1534(a) provides in part:

"(a) (1) Every licensed community care facility shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

"(A) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

"(i) When a license is on probation.

"(ii) When the terms of agreement in a facility compliance plan require an annual evaluation.

"(iii) When an accusation against a licensee is pending.

"(iv) When a facility requires an annual visit as a condition of receiving federal financial participation.

"(v) In order to verify that a person who has been ordered out of a facility by the department is no longer at the facility.

HANDBOOK CONTINUES

89245 EVALUATION VISITS (Continued)**89245****HANDBOOK CONTINUES**

"(B) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subparagraph (A)...

"(C) Under no circumstance shall the department visit a community care facility less often than once every five years.

"(2) The department shall notify the community care facility in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

"(3) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located."

HANDBOOK ENDS HERE

(b) The licensing agency shall have the authority to make any number of additional visits to a foster family home in order to determine compliance with applicable law and regulation.

(c) Repealed by Manual Letter No. CCL-97-09, effective 6/13/97.

NOTE: Authority cited: Sections 1530, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1501.1, 1507.5, 1530.5, 1531, 1533, 1534 and 1538, Health and Safety Code.

89246 EXCLUSIONS**89246**

(a) An individual can be prohibited from being employed, allowed in, and to have contact with clients in a licensed home as specified in Section 1558 of the Health and Safety Code.

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(1) Health and Safety Code Section 1558 states:

“(a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

HANDBOOK CONTINUES

89246 EXCLUSIONS (Continued)

89246

HANDBOOK CONTINUES

"(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

"(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

"(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1522.

"(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

"(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

"(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

"(c)(1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

"(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

"(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

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89361 REPORTING REQUIREMENTS**89361**

- (3) Any unusual incident or child absence which threatens the physical or emotional health or safety of any child.
- (4) Any suspected physical or psychological abuse of any child.
- (5) Communicable diseases as reported to caregiver by a health professional.
- (6) Poisonings.
- (7) Catastrophes.
- (8) Fires or explosions which occur in or on the premises.
- (b) When a written report of such an event is required by the licensing/approval agency, the caregiver shall submit, within 7 days, a written report of such event, which includes the following information:
 - (1) Child's name, age, sex, and date of admission.
 - (2) Date and nature of event.
 - (3) Attending physician's name, findings, and treatment, if any.
 - (4) Disposition of the case.
- (c) Any change in the caregiver's mailing address that does not also include a change in location shall be reported to the licensing/approval agency within 10 working days following the occurrence.
- (d) When there is a change in the location of the home, the caregiver shall notify the licensing/approval agency 30 days prior to the move or as soon as the information is available.
- (e) When the caregiver intends to be absent from the home for 48 hours or longer, the caregiver shall notify the licensing/approval agency and the child's authorized representative, in writing or by telephone and include the following information:
 - (1) Dates of intended absence.
 - (2) Whether the child will accompany the caregiver or remain in the home.
 - (3) Telephone number where caregiver may be contacted.
 - (4) Name, address, telephone number of substitute care provider.

89361 REPORTING REQUIREMENTS (Continued)**89361**

- (f) The caregiver shall report all changes in household composition within ten working days. These changes shall include, but not be limited to:
- (1) Any additions to the caregiver's family, including when the caregiver becomes guardian or conservator for any child or other person.
 - (2) The arrival or departure of any person, other than the children, residing in the home requires immediate notification and clearance per the requirements of Health and Safety Code Section 1522(b).

NOTE: Authority cited: Sections 1530, 1530.5, 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1501.1, 1507, 1507.2, 1507.5, 1520, 1530.6, 1531, and 1557.5, Health and Safety Code.

89370 CHILDREN'S RECORDS**89370**

- (a) The caregiver shall maintain a separate, complete, and current record or file in the home for each child, which includes a current placement agreement and Needs and Services Plan for each child, and the name, birth date and date of placement in the home.
- (b) The file should also contain a written consent that authorizes the caregiver to obtain other ordinary medical and dental care in an emergency if the authorized representative cannot be reached.
- (c) All children's records shall be available to the licensing/approval agency to inspect, audit, and copy upon demand during business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following requirements:
- (1) Licensing/approval agency representatives shall not remove any current emergency or health-related children's records unless the same information is otherwise readily available in another document or format.
 - (2) Prior to removing any records, a licensing/approval agency representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the caregiver.
 - (3) Licensing/approval agency representatives shall return the records to the home undamaged and in good order within three business days following the date the records were removed.
- (d) All information and records obtained from or regarding children shall be confidential except as otherwise authorized by law.

NOTE: Authority cited: Sections 1530, Health and Safety Code; Section 16001.9, Welfare and Institutions Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1520, 1530.5, 1531, and 1557.5, Health and Safety Code.

89565.1 CAREGIVER REQUIREMENTS FOR SPECIALIZED FOSTER FAMILY HOMES (Continued) 89565.1

(2) The report, signed by the person performing the health screening, shall indicate the following:

(A) Physical qualifications to perform the duties to be assigned.

(B) The presence of any health condition that would create a hazard to the caregiver, children or staff.

NOTE: Authority cited: Section 17730, Welfare and Institutions Code; Section 1530, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Section 17731(c), Welfare and Institutions Code and Sections 1531 and 1562, Health and Safety Code.

89566 PERSONNEL RECORDS FOR SPECIALIZED FOSTER FAMILY HOMES 89566

(a) The caregiver shall ensure that the personnel records of the caregiver and all persons subject to the requirements of Section 89565.1(a) contain the following:

(1) For any training or additional training from which the caregiver or other in-home health care provider is exempt:

(A) Documentation that the child's individualized health care plan team has determined that it is not necessary for the caregiver or other in-home health care provider to complete the specialized in-home health care training or additional training.

1. Documentation may be provided in different ways, including, but not limited to, a written statement from a member designated by the team that the team has been notified and has determined that the training or additional training is unnecessary.

(B) A copy of a valid license or certificate indicating that he/she is a licensed health care professional.

(2) For any training or additional training from which the caregiver or other in-home health care provider is not exempt:

(A) Documentation, by a health care professional providing the training, that he/she has successfully completed the specialized in-home health care training specified in Section 89565.1(a)(1).

(b) The caregiver of a foster family home caring for children with special health care needs shall ensure that employee records contain the following information:

**89566 PERSONNEL RECORDS FOR SPECIALIZED FOSTER
FAMILY HOMES (Continued)****89566**

- (1) Employee's full name.
 - (2) Driver's License number if the employee is to transport foster children.
 - (3) Date of employment.
 - (4) A statement signed by the employee that he/she is at least 18 years of age.
 - (5) Home address and phone number.
 - (6) Past related experience, including types of employment and former employers.
 - (7) Duties of the employee.
 - (8) Termination date if no longer employed by the home.
- (c) Records of health screenings and tests for tuberculosis required by Sections 89565.1(b) and (b)(1) shall be on file.
- (d) All personnel records shall be maintained at the home; and shall be available to the licensing agency to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following requirements:
- (1) Licensing representatives shall not remove any current emergency or health-related information for current caregivers unless the same information is otherwise readily available in another document or format.
 - (2) Prior to removing any children's records from a home, a licensing representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the caregiver.
 - (3) Licensing representatives shall return the children's records undamaged and in good order within three business days following the date the records were removed.
- (e) All personnel records shall be retained for at least three years following termination of employment.

NOTE: Authority cited: Section 17730, Welfare and Institutions Code; Sections 1530, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Section 17731, Welfare and Institutions Code and Sections 1501, 1501.1, 1507, 1507.2, 1530.5, and 1531, Health and Safety Code.